

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0480P

Income tax

For the Calendar Year 2000

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a corporate income tax return for the calendar year 2000.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the error is unusual, and, feels the dual assessment of penalty and interest is excessive with regard to the nature of the error.

The previous Chief Financial Officer (CFO) sent the intended estimated taxes for Indiana to the IRS. As work backed up and the previous CFO was not able to keep up with the work, the previous CFO was terminated. The current CFO was hired within a few days. The current CFO did not review the mail backlog for a few months due to the large amount of work that needed to be caught up on. When the current CFO did review the mail backlog, the current CFO realized, from notices from the IRS and the Department, that the Indiana estimated taxes had been sent to the IRS. The current CFO immediately filed an amended return to the IRS, on or about May 2003. The refund was received September 2003, where upon, the Department was paid.

To continue, the taxpayer feels the dual assessment of penalty and interest is excessive in light of the fact the taxpayer never had use of the money sent to the IRS. The IRS did not pay interest on the refund.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties as the taxpayer did not have the necessary internal controls to reveal the misdirection of the mailed funds. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.